

**DONELAN, CLEARY, WOOD & MASER, P.C.** DEC 31 '97 10-45 AM

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

December 31, 1997

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
1925 K Street, N.W., Room 704  
Washington, D.C. 20423-0001

Dear Secretary Williams:

Enclosed for recordation, under the provision of 49 U.S.C. § 11301(a) and the regulations thereunder, are executed original counterparts of Amended and Restated Locomotive Lease and Rehabilitation Agreement ("Lease") between General Electric Company, a New York corporation acting through its Transportation Systems Business Operations ("Lessor"), and Consolidated Rail Corporation, a Pennsylvania corporation ("Lessee"), a primary document not previously recorded, dated as of December 29, 1997.

The names and addresses of the parties to the enclosed document are as follows:

LESSOR: General Electric Company  
2901 East Lake Road  
Erie, PA 16531

LESSEE: Consolidated Rail Corporation  
Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19101

A general description of the locomotives covered by the enclosed document is set forth in Schedules A-1, A-2, B and C to the Lease; said schedules are also attached hereto.

Also enclosed is a remittance in the amount of \$24 for the required recording fee.

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
DEC 31 10 45 AM '97

*Counterparts attached*

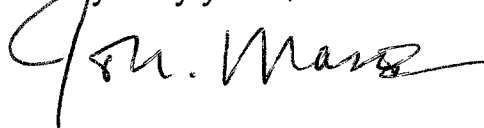
Letter to The Honorable Vernon A. Williams  
December 31, 1997  
Page 2

A short summary of the document to appear in the index follows:

Amended and Restated Locomotive Lease and Rehabilitation Agreement covering locomotives as set forth in Schedules A-1, A-2, B and C thereto.

Once the filing has been made, please return to bearer the stamped counterparts not needed for your files, together with the fee receipt, the letter from the STB acknowledging the filing, and the extra copies of this letter of transmittal.

Very truly yours,

A handwritten signature in black ink, appearing to read "John K. Maser III". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John K. Maser III  
*Attorney for purposes of this filing for  
General Electric Company*

Enclosures  
2863-000

## SCHEDULE A-1

A. Description of Locomotives. The "Schedule A-1 Locomotives" under the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-1 is attached shall be the General Electric diesel electric locomotives bearing the following road numbers and being scheduled to be placed into Lessee's possession on the following dates:

<u>Description</u>	<u>Road Numbers</u>	<u>Estimated Delivery Date</u>
C30-7	GECX523	May 19, 1994
C30-7	GECX525	May 19, 1994
C30-7	GECX526	May 19, 1994
C30-7	GECX529	May 19, 1994
C30-7	GECX532	May 19, 1994
C30-7	GECX533	May 19, 1994
C30-7	GECX534	May 19, 1994
C30-7	GECX535	May 19, 1994
C30-7	GECX536	May 19, 1994
C30-7	GECX537	May 19, 1994
C30-7	GECX538	May 19, 1994
C30-7	GECX539	May 19, 1994
C30-7	GECX540	May 19, 1994
C30-7	GECX541	May 19, 1994
C30-7	GECX542	May 19, 1994
C30-7	GECX543	May 19, 1994
C30-7	GECX544	May 19, 1994
C30-7	GECX545	May 19, 1994
C30-7	GECX546	May 19, 1994
C30-7	GECX547	May 19, 1994
C30-7	GECX548	May 19, 1994
C30-7	GECX549	May 19, 1994
C30-7	GECX550	May 19, 1994
C30-7	GECX551	May 19, 1994
C30-7	GECX552	May 19, 1994
C30-7	GECX553	May 19, 1994
C30-7	GECX554	May 19, 1994
C30-7	GECX555	May 19, 1994
C30-7	GECX556	May 19, 1994
C30-7	GECX557	May 19, 1994
C30-7	GECX558	May 19, 1994
C30-7	GECX559	May 19, 1994
C30-7	GECX560	May 19, 1994
C30-7	GECX561	May 19, 1994
C30-7	GECX562	May 19, 1994

<u>Description</u>	<u>Current</u>	Road Numbers <u>New</u>	Estimated <u>Delivery Date</u>
--------------------	----------------	----------------------------	-----------------------------------

B. Term. As to the Schedule A-1 Locomotives on this Schedule, the term of the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-1 is attached shall expire on the earlier to occur of (i) September 30, 1998 or (ii) the NS/CSX Control Date, or on such other date as the parties to the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-1 is attached may agree in writing.

## SCHEDULE A-2

A. Description of Locomotives. The "Schedule A-2 Locomotives" under the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-2 is attached shall be the General Electric diesel electric locomotives bearing the following road numbers and being scheduled to be placed into Lessee's possession on the following dates:

<u>Description</u>	<u>Road Number</u>	<u>Estimated Delivery Date</u>
C30-7	GECX500	May 19, 1994
C30-7	GECX504	May 19, 1994
C30-7	GECX505	May 19, 1994
C30-7	GECX513	May 19, 1994
C30-7	GECX516	May 19, 1994
C30-7	GECX517	May 19, 1994
C30-7	GECX518	May 19, 1994
C30-7	GECX519	May 19, 1994
C30-7	GECX522	May 19, 1994

B. Term. As to the Schedule A-2 Locomotives on this Schedule, the term of the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-2 is attached shall expire on the earlier to occur of (i) September 30, 1998 or (ii) the NS/CSX Control Date, or on such other date as the parties to the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-2 is attached may agree in writing.

## SCHEDULE B

A. Description of Locomotives. The "Schedule B Locomotives" under the Locomotive Lease and Rehabilitation Agreement to which this Schedule B is attached shall be the General Electric diesel electric locomotives bearing the following road numbers and being scheduled to be placed into Lessee's possession on the following dates:

<u>Description</u>	<u>Road Number</u>	<u>Estimated Delivery Date</u>
C30-7	GECX580✓	October 1, 1997
C30-7	GECX581✓	October 1, 1997
C30-7	GECX582✓	October 1, 1997
C30-7	GECX583✓	October 1, 1997
C30-7	GECX584✓	October 1, 1997
C30-7	GECX585✓	October 1, 1997
C30-7	GECX586✓	October 1, 1997
C30-7	GECX587✓	October 1, 1997
C30-7	GECX588✓	October 1, 1997
C30-7	GECX589✓	October 1, 1997
C30-7	GECX590✓	October 1, 1997
C30-7	GECX591✓	October 1, 1997
C30-7	GECX592✓	October 1, 1997
C30-7	GECX593✓	October 1, 1997
C30-7	GECX594✓	October 1, 1997
C30-7	GECX595✓	October 1, 1997

B. Term. As to the Schedule B Locomotives on this Schedule, the term of the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule B is attached shall expire on the earlier to occur of (i) September 30, 1998 or (ii) the NS/CSX Control Date, or on such other date as the parties to the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule B is attached may agree in writing.

## SCHEDULE C

A. Description of Locomotives. The "Schedule C Locomotives" under the Locomotive Lease and Rehabilitation Agreement to which this Schedule C is attached shall be the General Electric diesel electric locomotives bearing the following road numbers and being scheduled to be placed into Lessee's possession on the following dates:

<u>Description</u>	<u>Road Number</u>	<u>Estimated Delivery Date</u>
Super7-30C	GECX3000	January 1, 1998
Super7-30C	GECX3001	January 1, 1998
Super7-30C	GECX3002	January 1, 1998
Super7-30C	GECX3003	January 1, 1998
Super7-30C	GECX3004	January 1, 1998
Super7-30C	GECX3005	January 1, 1998
Super7-30C	GECX3006	January 1, 1998
Super7-30C	GECX3007	January 1, 1998
Super7-30C	GECX3008	January 1, 1998
Super7-30C	GECX3009	January 1, 1998
Super7-30C	GECX3010	January 1, 1998

B. Term. As to the Schedule C Locomotives on this Schedule, the term of the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule C is attached shall expire on the earlier to occur of (i) September 30, 1998 or (ii) the NS/CSX Control Date, or on such other date as the parties to the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule C is attached may agree in writing.

SURFACE TRANSPORTATION BOARD  
WASHINGTON, D. C. 20423-0001

OFFICE OF THE SECRETARY

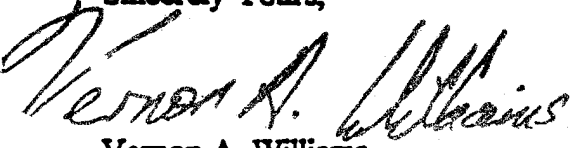
Allen H. Harrison, Jr.  
Donelan, Cleary, Wood & Maser, PC  
1100 New York Avenue, NW., Ste. 750  
Washington, DC., 20005-3934

DATE: 12/31/97

Dear Sir: .....

The enclosed document(s) was recorded pursuant to the provisions of 49 U.S.C. 11301  
and 49 CFR 1177.3 (c), on 12/31/97 at 10:45AM, and  
assigned recordation number(s). 21126.

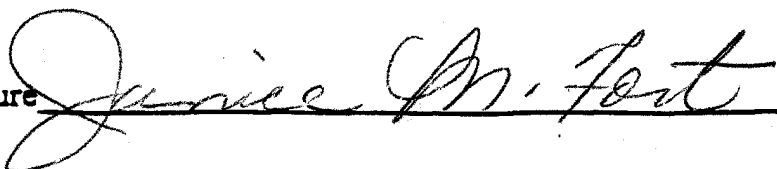
Sincerely Yours,

  
Vernon A. Williams  
Secretary

Enclosure(s)

\$ 24.00 ..... The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid. In the event of an error or any questions concerning this fee, you will receive a notification after the Surface Transportation Board has an opportunity to examine your document.

Signature





DEC 31 '97 10-45 AM

**AMENDED AND RESTATED LOCOMOTIVE LEASE AND REHABILITATION AGREEMENT**

**THIS AMENDED AND RESTATED LOCOMOTIVE LEASE AND REHABILITATION AGREEMENT** (this "Agreement") is made as of December 29, 1997, between General Electric Company, a New York corporation acting through its Transportation Systems Business Operations ("Lessor"), and Consolidated Rail Corporation, a Pennsylvania corporation ("Lessee") and amends and restates the Locomotive Lease and Rehabilitation Agreement between Lessor and Lessee dated as of June \_\_, 1994, as heretofore amended (the "Original Agreement").

1     Equipment

Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use under the terms and conditions set forth herein, the locomotive(s) described in Schedules A-1, A-2, B and C hereto (whether taken individually or in the aggregate, "Locomotives").

2     Delivery and Acceptance

2.1     Delivery of the Locomotives has been or will be made at Lessee's facility in Cleveland, Ohio or such other location as the parties mutually agree. The estimated date of delivery of each Locomotive is set forth in Schedules A-1, A-2, B and C hereto.

2.2     Each Locomotive shall be deemed to have been accepted by Lessee upon delivery to Lessee of such Locomotive.

2.3     Lessee shall provide to Lessor a written inspection report, subject to verification and confirmation by Lessor, describing the condition of each Locomotive (including the major components thereof) at the time of delivery of such Locomotive to Lessee.

3     Warranty as to Title; Disclaimer of Other Warranties

3.1     Lessor warrants that it has good and marketable title in and to the Locomotives, free and clear of any and all liens and encumbrances of any kind. In the event of any breach of such warranty, Lessor shall, upon receiving written notice from Lessee, promptly remedy such breach. The foregoing shall constitute Lessee's sole remedy for any such breach.

3.2     The parties acknowledge that the Locomotives are used goods in need of repair and maintenance. Accordingly, Lessee acknowledges and agrees that, except as set forth in Section 3.1, Lessor has not made and shall not be deemed to have made any warranty or representation, whether written, oral, implied or statutory, as to the Locomotives or as to the absence of any defect therein, it being agreed that Lessee is

leasing the Locomotives on an "as is" basis. IN PARTICULAR NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY, BOTH OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED BY LESSOR.

4     Rehabilitation; Sublease

4.1     Upon delivery of the Locomotives listed on Schedule A-1 and A-2 (collectively, the "Schedule A Locomotives") to Lessee (or within a reasonable period of time thereafter), Lessee shall undertake to rehabilitate the Schedule A Locomotives so as to make them operational. Such rehabilitation shall be the sole responsibility, and under the sole direction, of Lessee. Lessee shall, to the extent possible, and in order to maintain quality levels consistent with Lessor's general standards for its locomotives, fulfill its renewal parts needs for such rehabilitation by purchasing renewal parts from Lessor.

4.2     Lessee shall keep full and complete records, in such manner and in such detail as shall be acceptable to Lessor, in order to document all costs actually incurred by Lessee as a result of such rehabilitation (such costs being the "Rehabilitation Costs"). Rehabilitation Costs in respect of any Schedule A Locomotive shall include only the initial costs incurred in rehabilitating such Schedule A Locomotive and shall not include any costs or expenses incurred (i) after such Schedule A Locomotive has been subleased to a third party or (ii) after such Schedule A Locomotive has been in operation (including testing) for 2,000 miles. Rehabilitation Costs shall consist of materials and labor costs as determined in accordance with Annex 1 hereto. Rehabilitation Costs shall be determined and recorded separately for each Set of Schedule A Locomotives (as defined in Section 4.3). Lessee shall, on a weekly basis, provide Lessor with detailed information in writing as to the Rehabilitation Costs incurred with respect to each Schedule A Locomotive, together with summary information in writing as to the aggregate Rehabilitation Costs incurred with respect to each Set. Lessor may from time to time, at reasonable times and upon reasonable notice to Lessee, inspect and audit any and all such records and costing procedures for accuracy and appropriateness.

4.3     Lessee may sublease the Locomotives pursuant to one or more subleases with third parties, all in accordance with such terms and conditions as Lessee may in its sole discretion determine, *except* to the extent that such sublease is inconsistent with the requirements set forth in this Agreement. The Schedule A Locomotive(s) subleased pursuant to any particular sublease, or employed by Lessee for its own use, shall be treated in this Agreement as a discrete group of Schedule A Locomotives and shall be referred to in this Agreement as a "Set" of Schedule A Locomotives; *provided, however*, that in the event that the number of Schedule A Locomotives so subleased under any particular sublease exceeds five (5), then such Schedule A Locomotives

shall be broken down into two or more "Sets", each of which shall consist of five or less Schedule A Locomotives.

5     Replacements; Maintenance

5.1     Any parts installed or replacements made by Lessee shall be considered accessions to the Locomotives and title thereto shall immediately vest in Lessor, without cost or expense to Lessor.

5.2     Except for (i) alterations or changes that are required by law or regulatory authority and/or (ii) standard, acceptable repairs that are customary in the railroad industry, Lessee shall not make any change in the design, construction or specifications of the Locomotives' body or electrical equipment, or components thereof, without the prior written approval of Lessor.

5.3     Lessee shall, during the term of this Agreement, at its expense (or at the expense of the relevant sublessee(s) under one or more subleases), keep (or cause such sublessee(s) to keep) the Schedule A Locomotives in good repair and operating condition (reasonable wear and tear excepted). Lessee shall, at its expense (or at the expense of such sublessee(s)), furnish and install (or cause such sublessee(s) to furnish and install) consumable replacement materials for the Schedule A Locomotives as needed. Lessee is responsible for repairing (or causing such sublessee(s) to repair) the Schedule A Locomotives promptly when repairs are needed, subject to availability of material to be supplied by Lessor, if any.

5.4     Lessor shall, during the term of this Agreement, at its expense, keep the Locomotives listed on Schedule B and Schedule C (the "Schedule B Locomotives" and the "Schedule C Locomotives", respectively) in good repair and operating condition (reasonable wear and tear excepted). Lessee shall, at its expense (or at the expense of the relevant sublessee(s) under one or more subleases), furnish and install (or cause such sublessee(s) to furnish and install) consumable replacement materials for the Schedule B Locomotives and the Schedule C Locomotives as needed. Lessor is responsible for repairing the Schedule B Locomotives and the Schedule C Locomotives promptly when repairs are needed, subject to availability of material to be supplied by Lessor, if any.

6     Use and Operation

6.1     Lessee agrees to comply with all laws of the jurisdictions in which its operations involving the Locomotives may extend and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over Lessee or the Locomotives, to the extent that such laws and rules affect the operation or use of the Locomotives. In the

event that such laws or rules require the alteration of Locomotives, Lessee will conform therewith at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that Lessee may, in good faith, contest the validity and application of any such law or rule in any reasonable manner that does not, in the opinion of Lessor, adversely affect the property or rights of Lessor as owner.

6.2 Lessee will use and operate the Locomotives in conformance with all applicable manufacturer recommendations.

6.3 Lessee will maintain records as to the use, operation, movement and maintenance of the Locomotives, and make such records available for Lessor's inspection at reasonable times and upon reasonable notice.

6.4 Lessee agrees to cause the Locomotives to be used exclusively within the boundaries of the United States, except as specifically agreed to in writing by Lessor, which agreement will not be unreasonably withheld.

6.5 Charges levied by third parties for use of their rights of way, track, storage or hauling are the responsibility of Lessee.

## 7 Rentals and Future Transactions

7.1 Lessee agrees to pay to Lessor, as rent for each and every Set of Schedule A-1 and A-2 Locomotives, the following amounts:

(a) Up to and until such time as Lessee has recovered (by means of the Receipt (as defined in Section 7.3) of Rentals (as defined in Section 7.3) for such Set) an aggregate amount equal to the sum of (1) the Rehabilitation Costs for such Set plus (2) maintenance costs incurred up to and until such time by Lessee in respect of the Locomotives in such Set that (x) are not paid for or reimbursed by a third party (*e.g.*, a sublessee under a sublease) and (y) are incurred in connection with maintenance activity that is mutually agreed to by Lessor, which agreement shall not be unreasonably withheld, amounts equal to five percent (5%) of Rentals for such Set; and

(b) Subsequent to such time as Lessee has recovered (by means of the Receipt of Rentals for such Set) an aggregate amount equal to the aggregate amount described above in Section 7.1(a)(i), amounts equal to ninety-five percent (95%) of Rentals for such Set.

7.2 Lessee agrees to pay to Lessor, as rent for each and every Schedule B Locomotive and Schedule C Locomotive, amounts equal to (i) with respect to

Locomotives subleased to third parties, ninety-five percent (95%) of Rentals for such Locomotive and (ii) with respect to Locomotives that Lessee does not sublease to a third party but instead employs for Lessee's own use, one hundred percent (100%) of Rentals with respect to such Locomotive.

7.3 As used in this Agreement, "Rentals" means, with respect to any Set of Locomotives or any Locomotive:

(i) any and all rents received (or accrued) by Lessee under any sublease in respect of such Set or such Locomotive; and/or

(ii) in the event that Lessee does not sublease a Locomotive to a third party but instead employs such Locomotive for Lessee's own use, an amount (deemed to be paid monthly) equal to the fair market rent for such Locomotive or such Set.

For the purposes of clause (ii) of the preceding sentence, the fair market rent for a Set shall be determined by Lessee, acting in good faith, by multiplying the number of Schedule A Locomotives in such Set by the average monthly rental of all Schedule A Locomotives and Schedule B Locomotives then being subleased to third parties on an arms-length basis; *provided, however*, that if fewer than five Schedule A Locomotives and Schedule B Locomotives in the aggregate are then currently being so subleased, then Lessee and Lessor shall instead determine the fair market rent for a Set through mutual agreement. For purposes of clause (ii) above, the fair market rent for a single Schedule B Locomotive shall be determined by Lessee, acting in good faith, to be the average monthly rental of all Schedule A Locomotives and Schedule B Locomotives then being subleased to third parties on an arms-length basis; *provided, however*, that if fewer than five Schedule A Locomotives and Schedule B Locomotives in the aggregate are then currently being so subleased, then Lessee and Lessor shall instead determine the fair market rent for the Schedule B Locomotives through mutual agreement. For purposes of clause (ii) above, the fair market rent for a single Schedule C Locomotive shall be determined by Lessee, acting in good faith, to be the average monthly rental of Schedule C Locomotives then being subleased to third parties on an arms-length basis; *provided, however*, that if fewer than five Schedule C Locomotives are then currently being so subleased, then Lessee and Lessor shall instead determine the fair market rent for the Schedule C Locomotives through mutual agreement. As used in this Agreement, the date on which there is a "Receipt" of Rentals means (x) in the case of rents received (or accrued) under any sublease, the date(s) of receipt (or accrual) by Lessee of such rents and (y) in the case of amounts defined in Section 7.3(ii) as Rentals in respect of Locomotives employed for Lessee's own use, the occurrence of the fifteenth day of each month that such Locomotives are so employed.

7.4 Payment of all rental charges will be made within ten (10) days of Lessee's Receipt of Rentals. Any and all other payments due will be made within thirty (30) days of invoice. Lessee shall, on a monthly basis, provide Lessor with detailed information in writing as to the Receipt of Rentals with respect to each Locomotive, together with summary information in writing as to the Receipt of aggregate Rentals with respect to each Set.

7.5 On the earlier of (the "Locomotive Sale Transaction Date") (i) September 30, 1998 or (ii) the date on which is consummated the acquisition of Lessee by Norfolk Southern/CSX (the "NS/CSX Control Date"), Lessor shall sell, transfer and convey to Lessee all right, title and interest of Lessor in and to the Schedule A-2 Locomotives (the "Locomotive Sale Transaction"), for no additional consideration, by entering into the form of Locomotive Sales Agreement attached hereto as Exhibit A; provided, that in the event that any Schedule A-2 Locomotive is destroyed prior to the Locomotive Sale Transaction Date, Lessor shall convey to Lessee a locomotive of the same type in substantially equivalent operating condition as the destroyed Schedule A-2 Locomotive immediately prior to such destruction. As to the Schedule A Locomotives, in the event that the Locomotive Sale Transaction Date occurs prior to September 30, 1998, Lessee shall be entitled to receive from Lessor, for the period from the Locomotive Sale Transaction Date through September 30, 1998, payment of that portion of the amount of rents received by Lessor from a lessee under any lease of Schedule A Locomotives that Lessee would have been entitled to retain pursuant to this Section 7 if such rents so received were "Rentals" under this Section 7 and if the Locomotive Sale Transaction had not been consummated prior to September 30, 1998.

## 8 Taxes and Liens

8.1 Lessee agrees that, during the term of this Agreement (including any renewal periods hereof), Lessee will promptly pay, as additional rentals, all taxes, assessments and other governmental charges levied or assessed against Lessor, or any predecessor or successor in title of Lessor, as the case may be, on account of its ownership of the Locomotives, or on account of the possession, use or operation thereof, or on account of the earnings arising therefrom (exclusive, however, of any tax in the nature of an income tax on the rentals herein provided), including any sales or similar taxes payable on account of the leasing of the Locomotives hereunder; Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or

administrative proceedings contest the validity or amount thereof, unless thereby, in the judgment of Lessor, the rights or interests of Lessor will be adversely affected. In the event that any tax reports are required to be made concerning said Locomotives, Lessee will either make such reports in such manner as to show the ownership of such Locomotives by Lessor or will notify Lessor of such requirement and will make such report in such manner as shall be satisfactory to Lessor.

8.2 Lessee will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim against Lessee that, if unpaid, might become a lien or charge upon or against the title or interest of Lessor to the Locomotives or that might have the effect of altering in any way the rights of Lessor in such Locomotives under this Agreement. Lessee shall not be required to pay or discharge any such debt, tax, charge, assessment, or obligation or claim so long as the validity or amount thereof shall be contested in good faith and by appropriate legal or administrative proceedings, unless such contest will, in the judgment of Lessor, adversely affect the rights or interests of Lessor.

9 Loss and Damage

9.1 Lessee shall bear the entire risk of loss (including theft) or damage to any Locomotive from the date of delivery through redelivery to Lessor as provided herein, regardless of cause, except to the extent caused directly and solely by the negligence or willful misconduct of Lessor.

9.2 Lessee shall notify Lessor immediately of any accident, collision, loss, theft or damage involving any Locomotive, to be followed promptly by a written report to Lessor. Lessee shall provide all assistance reasonably requested by Lessor in the investigation, defense or prosecution of any resulting claims or suits.

9.3 In the event that one or more Locomotives is lost or damaged beyond repair, Lessee shall so notify Lessor. Within sixty (60) days of such notification, Lessee shall pay Lessor the rent payable through the date of notification and the casualty value of such Locomotive(s). For the purpose of this Agreement, the casualty value of each Schedule A Locomotive shall be equal to the sum of:

(i) \$32,500, plus

(ii) the greater of:

(A) the fair market value of such Locomotive (as determined in good faith by the parties hereto), less the sum of (x) \$32,500 plus (y) the total Rehabilitation Costs for the Set containing such Schedule A

Locomotive divided by the number of Schedule A Locomotives in such Set (including such Schedule A Locomotive); and

(B) zero.

For purposes of this Agreement, the casualty value of each Schedule B Locomotive shall be equal to \$100,000 and the casualty value of each Schedule C Locomotive shall be equal to \$250,000. Upon payment of the foregoing amounts, Lessor will pass title to the lost or damaged Locomotive(s) to Lessee, and this Agreement will terminate with respect to such Locomotive(s).

9.4 In the event that a Locomotive is partly damaged or destroyed, Lessee shall promptly elect, after consultation with Lessor (during which consultation the parties hereto shall take into account a number of factors, including, without limitation, the amount of time such Locomotive has been in use, the amount of investment in such Locomotive that each party has recovered (in the case of the Schedule A Locomotives), normal wear and tear with respect to Locomotive, and the then current fair market value of such Locomotive), whether to repair the Locomotive or consider it damaged beyond repair. If Lessee elects to repair the Locomotive, it shall do so (or have the repairs done) at its own expense. It is understood that the Locomotive so repaired must be restored to the same operating condition as existed prior to the damage. Moreover, during the period such repairs are being made, Lessee's obligation to pay rent shall continue.

9.5 Lessee shall, at all times at its own expense, cause to be carried and maintained (and shall furnish to Lessor, upon request therefor, a certificate evidencing) (i) all risk insurance on the Locomotives and (ii) public liability insurance with respect to third party personal injury and property damage, in such amounts (subject to customary and prudent deductibles) and against such risks and with such insurance companies as is consistent with prudent railroad industry practices; provided, however, that, if Lessee customarily self-insures against such risks, Lessee may self-insure to the extent that such self-insurance is consistent with prudent railroad industry practices. Any such policies of insurance carried (i) will name Lessor as an additional insured, (ii) provide that they will not be cancelled or materially altered without thirty days prior written notice to Lessor and (iii) will contain such other appropriate provisions as are agreed upon by the parties.

## 10 Indemnity

Lessee agrees to indemnify, defend, and hold Lessor (and any assignee or successor in interest of Lessor) harmless from any and all losses, costs (including reasonable attorney's fees), claims, actions, suits, and judgments whatsoever ("Liabilities") arising on account of, or caused in any way by, the



Locomotives or the use, ownership or operation thereof, except to the extent caused directly and solely by the gross negligence or willful misconduct of Lessor. Lessee will notify Lessor immediately of any Liabilities and permit Lessor to appear in any proceeding to defend its interests.

## 11 Liability of Lessor

11.1 Lessor's liability arising out of the furnishing or use of any Locomotive under this Agreement, based on contract, warranty, tort (including negligence) or otherwise, will in no case exceed the fair market value of such Locomotive.

11.2 In no case, whether arising under contract, warranty, tort (including negligence) or otherwise, will Lessor's liability include special, incidental, indirect or consequential damages, including, without limitation, loss of revenue or profits, damage to freight, loss of use of any equipment, cost of capital, downtime costs, or claims of Lessee's customers for such damages.

11.3 The provisions of 11.1 and 11.2 above shall not apply to claims of third parties (except Lessee's customers) for personal injury (including death) or property damage to the extent such injury or damage is caused directly and solely by Lessor's gross negligence or willful misconduct.

## 12 Patents

12.1 Except in case of designs, articles and materials specified by Lessee and not manufactured by Lessor, or manufactured by Lessor to Lessee's design, Lessor shall defend any suit or proceeding brought against Lessee based on a claim that any Locomotive or any part thereof manufactured by Lessor constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at Lessor's expense) for the defense of same, and Lessor shall pay all damages and costs awarded therein against Lessee. In case said Locomotive, or any such part thereof, is held to constitute infringement and the use of said Locomotive or part is enjoined, Lessor shall, at its own expense and option: (i) procure for Lessee the right to continue using said Locomotive or part; (ii) replace the infringing item(s) with non-infringing items; (iii) modify the infringing item(s) so as to be non-infringing; or (iv) take possession of said Locomotive and cancel this Agreement with respect to such Locomotive, effective as of the date on which the Locomotive or part is held to constitute infringement in such suit, Lessor to pay the reasonable cost of returning said Locomotive to Lessor. The foregoing states the entire liability of Lessor for patent infringement. In the event that the use of a Locomotive is enjoined based on a claim of infringement covered by the provisions of this Section 12.1, Lessee's obligation to pay rent with respect to such Locomotive shall

abate until the use of the Locomotive no longer is so enjoined or this Agreement is cancelled with respect to such Locomotive.

12.2 With respect to any designs, articles or materials not manufactured by Lessor or manufactured by Lessor to Lessee's design, Lessee shall defend any suit or proceeding brought against Lessor so far as based on a claim that any such designs, articles or materials, or any part thereof, furnished under this Agreement constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at Lessee's expense) for the defense of same, and Lessee shall pay all damages and costs awarded therein against Lessor. In the event that such designs, articles or materials, or any part thereof, is held to constitute infringement, and the use thereof is enjoined, Lessee shall, at its own expense and option, procure for Lessor the right to continue using or manufacturing said designs, articles and materials, or shall permit Lessor, at Lessee's expense, to modify such designs, articles and materials so as to become non-infringing. Notwithstanding any suits or proceedings that may be brought against Lessor or Lessee based on a claim that any designs, articles or materials specified by Lessee constitute an infringement of any patent of the United States, Lessee's obligation to pay rent shall continue for the term of this Agreement.

13 Title, Identification, Recording

13.1 No right, title or interest in the Locomotives will vest in Lessee by reason of this Agreement or by reason of the delivery to or use by Lessee of the Locomotives, except the right to use the Locomotives in accordance with the terms of this Agreement.

13.2 Lessee will take all actions necessary to protect Lessor's rights and interests in and to the Locomotives and will take no action inconsistent therewith. In addition, unless otherwise agreed to or authorized by Lessor in writing, Lessee agrees to take no action in regard to any financing or trust agreement involving or covering the Locomotives.

13.3 Prior to delivery of the Locomotives, Lessor shall cause to be conspicuously marked on each side of the Locomotives, at Lessor's expense, the following legend:

OWNED BY GENERAL ELECTRIC COMPANY UNDER AN  
AGREEMENT FILED WITH THE SURFACE  
TRANSPORTATION BOARD PURSUANT TO 49 U.S.C.  
§11301

Lessee shall not permit such legend to be removed or altered and, in the event that such words are removed, defaced or destroyed, Lessee shall immediately replace such

legend at its expense. In the event the Locomotives are transferred and this Lease is assigned to a third party pursuant to Section 14 of this Agreement, Lessee agrees to replace such legend at the assignor's request and expense. Lessee shall not allow the name of any person, association or corporation to be placed on the Locomotives, but the Locomotives may be lettered with the initials or other insignia customarily used by Lessee on its equipment of the same or a similar type for convenience of identification of Lessee's right to use and operate the Locomotives under this Agreement.

13.4 Lessor, at the expense of Lessee, shall promptly cause this Agreement and any supplements hereto and any assignment and reassignment hereof to be filed with the Surface Transportation Board. In addition, Lessee shall take such other actions as may be required by Federal or state law, or as may be reasonably requested by Lessor, for the proper protection of Lessor's title and interest in the Locomotives.

#### 14 Assignment

14.1 Lessee shall not assign, transfer or encumber this Agreement or any interest or right herein without the prior written consent of Lessor. Any such transfer, assignment or encumbrance, whether voluntary or involuntary, or by operation of law or otherwise, without such prior written consent, shall be void and shall, at the option of Lessor, terminate this Agreement.

14.2 Lessor, upon prior written notice to Lessee, may assign this Agreement and all or any of the rights, benefits, advantages and obligations hereunder (including, without limitation, title to any Locomotive) to any third party as Lessor may select in its sole discretion.

14.3 On the earlier of (i) September 30, 1998 or (ii) the NS/CSX Control Date") (or, with respect to those Schedule A-2 Locomotives which Lessor acquires from Lessee pursuant to the exercise of the option referred to in Section 7.5, the date on which such Locomotives are acquired), Lessee shall assign to Lessor all of Lessee's right, title and interest in and to, and Lessor shall agree to perform all obligations of the Lessee which first accrue following the effective date of assignment and do not relate to any act or omission of Lessee under, the Locomotive Lease Agreement dated July 23, 1997, between Lessee and Union Pacific Railroad Company (the "UP Sublease") with respect to the Schedule A-1 Locomotives, those Schedule A-2 Locomotives which Lessor acquires from Lessee pursuant to the exercise of the option referred to in Section 7.5, the Schedule B Locomotives and the Schedule C Locomotives and, concurrently with such assignment, shall obtain for the benefit of Lessor the consent of UP to such assignment.

#### 15 Representations and Warranties

15.1 Lessor represents and warrants that it has the right to enter into this Agreement.

15.2 Lessee represents and warrants that:

(a) Lessee is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement, and has the power and authority to own its properties and carry on its business as now conducted;

(b) The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and does not and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and this Agreement is a valid and binding obligation of Lessee enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against Lessee in accordance with its terms;

(c) No mortgage, security or trust agreement or other instrument binding upon Lessee shall in any manner affect the rights and interests of Lessor in and to the Locomotives;

(d) (i) No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Agreement or for the validity and enforceability thereof or the leasing of the Locomotives hereunder for the rentals and on the other terms and conditions provided for herein; or, if any such authorizations are required, all such authorizations have been obtained; and

(ii) if any such authorizations shall hereafter be required, all such authorizations shall promptly be obtained; and

(e) No litigation or administrative proceedings are pending or threatened against Lessee that would affect the validity of this Agreement or the rights of Lessor hereunder.

## 16 Default

16.1 If Lessee breaches any provision of this Agreement and such breach is not cured within fourteen (14) calendar days after written notice from Lessor, Lessor may, without prejudice to any other rights or remedies it may have under this Agreement, at law or in equity, do any one or more of the following:

(a) Proceed by court action, either at law or in equity, to enforce performance by Lessee of the covenants of this Agreement or to recover damages for the breach thereof;

(b) Terminate this Agreement immediately, whereupon Lessee shall promptly redeliver the Locomotives to Lessor at Lessor's facility in Erie, Pennsylvania or such other location as Lessor may designate. Lessor shall, nevertheless, have the right to recover from Lessee any and all amounts that may then be due and owing or that become due and unpaid for the use of the Locomotives (including, without limitation, rentals accruing on the Locomotives after the date of termination) and recover from Lessee amounts due pursuant to Section 16.1(c) below; and

(c) In the event that Lessee fails to redeliver the Locomotives promptly under Section 16.1(b), or upon demand for redelivery by Lessor if Lessor does not terminate this Agreement, Lessor may enter upon the premises of Lessee or other premises where the Locomotives may be and take possession of all or any such Locomotives and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns. Lessee shall pay to Lessor any and all costs associated with the repossession of the Locomotives.

16.2 The remedies and powers in this Agreement in favor of Lessor shall not be deemed exclusive, but shall be cumulative and in addition to all other remedies and powers existing at law or in equity, and each and every remedy and power may be exercised from time to time and as often and in such order as may be deemed expedient by Lessor. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, that might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Lessor in the exercise of any remedy or power, no granting of an extension of time for the making of any payment due hereunder or other indulgence, and no exercise of any remedy or power shall impair any such remedy or power or the rights under this Agreement or shall constitute a waiver of any breach or default or an acquiescence therein. In the event that Lessor brings suit and is entitled to judgment hereunder, then Lessor shall be entitled to recover reasonable expenses, including, without limitation, attorneys' fees, and the amount thereof shall be included in such judgment.

16.3 As used in this Section 16, a breach of a provision of this Agreement shall include, without limitation, the following:

(a) Failure to pay any amounts when due;

(b) Lessee's making or suffering, voluntarily, by operation of law or otherwise, any unauthorized assignment, lien, encumbrance or transfer of this Agreement or any interest herein or any right granted hereunder, if Lessee shall fail or refuse to cause

such assignment, lien, encumbrance or transfer to be cancelled by agreement of all parties having any interest therein;

(c) Any proceedings commenced by or against Lessee for relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions; or

(d) Failure to satisfy the insurance requirements under Section 9.5.

## 17 Term

17.1 The term of this Agreement shall commence upon delivery of the Locomotives and shall terminate on the date set forth in the applicable Schedule hereto, unless earlier terminated by the mutual consent of both parties hereto or as provided in Section 9 or Section 16. Locomotives returned to Lessor, whether at the end of the term, pursuant to a termination under Section 9 or Section 16, or otherwise, will be returned at Lessee's expense to Lessor's facility in Erie, Pennsylvania or such other location as Lessor may designate with a full complement of consumables, including fuel, oil and sand. Lessee and Lessor may by mutual oral or written agreement extend the term hereof without filing any notice of such extension.

THIRD PARTIES WHICH MAY REVIEW THIS LEASE ARE THEREFORE PLACED ON NOTICE THAT THE AFOREMENTIONED TERMINATION DATE MAY NOT BE RELIED UPON AS THE ACTUAL TERMINATION DATE OF THIS LEASE.

17.2 It is understood and agreed that any termination of this Agreement will not relieve either party hereto of any obligation arising prior to or upon such termination, including, without limitation, the obligations of Lessee under Sections 9, 10 and 13, and any obligation to pay any rent or other sums due and owing to Lessor at the time of any such termination or as a result of any such termination.

## 18 General

18.1 Subject Headings. The subject headings on this Agreement have been placed thereon for the convenience of the parties hereto and shall not be considered in any interpretation or construction of this Agreement.

18.2 Waiver. The failure of either party hereto to enforce at any time or for any period of time any provision of this Agreement shall not be construed as a waiver of such provision or of the rights of such party thereafter to enforce such provision.

18.3 Notice. All notices required or permitted hereunder shall be in writing and shall be deemed duly given when personally delivered or sent by first class mail, by nationally-recognized courier service or by facsimile.

18.4 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same instrument.

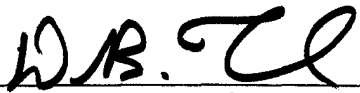
18.5 Applicable Law. Except as Federal law may be applicable, the terms and conditions of this Agreement and all rights and obligations hereunder shall be governed by the law of the Commonwealth of Pennsylvania, but Lessor and any assignee hereof shall be entitled to such additional rights arising out of the filing or recording hereof, or of any assignment hereof, as shall be conferred by the laws of any jurisdiction in which this Agreement or any such assignment shall be filed or recorded.

18.6 Partial Invalidity. In the event that any provision of this Agreement be held invalid or unenforceable, such invalid or unenforceable provision shall be ineffective but only to the extent minimally necessary to eliminate the invalidity or unenforceability, and the remainder of such provision, if any, and all of the other provisions of this Agreement, shall remain in full force and effect.

18.7 Entire Agreement. This Agreement (including the Schedules and Annex hereto), and any written amendments and riders hereto that are duly signed by Lessor and Lessee, amends and supersedes the Original Agreement and contains the entire and only agreement between the parties hereto concerning the subject matter hereof, and there are merged herein any and all prior and collateral representations, promises or conditions in connection with the subject matter hereof, and any representation, promises or condition not incorporated herein and made a part hereof shall not be binding upon either party hereto. No modification, renewal, extension, termination or waiver of this Agreement or any of the provisions herein contained shall be binding upon either party hereto unless made in writing by a duly authorized representative of such party.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Locomotive Lease and Rehabilitation Agreement as of the date first written above.

**GENERAL ELECTRIC COMPANY**

By:   
Name: D. B. Tucker  
Title: General Manager-Global  
Service Operations

**CONSOLIDATED RAIL  
CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

dab0901:36050:97002:HFT-08c.AGT  
hft 12/27/97



IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Locomotive Lease and Rehabilitation Agreement as of the date first written above.

**GENERAL ELECTRIC COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONSOLIDATED RAIL  
CORPORATION**

By: CR Medonch  
Name: CR Medonch  
Title: Gen Mgr - Mfg

dab0901:36050:97002:HFT-08c.AGT  
hR 12/27/97

STATE OF PENNSYLVANIA                    )  
  )       SS:  
COUNTY OF ERIE                            )

On the 29th day of December, 1997, before me personally appeared the within named David B. Tucker, to me personally known, who, being by me duly sworn, says that he/she is General Manager, Global Service Operations of General Electric Company ("GE"), that he/she is duly authorized to execute the foregoing instrument on behalf of GE and that the said instrument was signed on behalf of said GE by all requisite corporate authority and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the said GE.

*Carol A. Wahlen*

Notary Public

[ Notary Seal ]

My Commission expires

Notarial Seal  
Carol A. Wahlen, Notary Public  
Erie, Erie County  
My Commission Expires Dec. 12, 1998

Member, Pennsylvania Association of Notaries

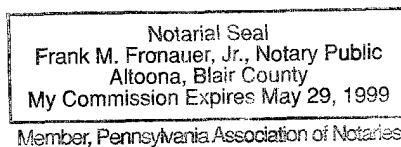
STATE OF PENNSYLVANIA )  
 )  
COUNTY OF BLAIR )

SS:

On the 29th day of December, 1997, before me personally appeared the within named Charles R. Medovich, to me personally known, who, being by me duly sworn, says that he/she is General Manager Manufacturing Assets of Consolidated Rail Corporation ("Conrail"), that he/she is duly authorized to execute the foregoing instrument on behalf of Conrail and that the said instrument was signed on behalf of said Conrail by all requisite corporate authority and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the said Conrail.

  
Notary Public

[ Notary Seal ]



My Commission expires \_\_\_\_\_

## SCHEDULE A-1

A. Description of Locomotives. The "Schedule A-1 Locomotives" under the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-1 is attached shall be the General Electric diesel electric locomotives bearing the following road numbers and being scheduled to be placed into Lessee's possession on the following dates:

<u>Description</u>	<u>Road Numbers</u>	<u>Estimated Delivery Date</u>
C30-7	GECX523	May 19, 1994
C30-7	GECX525	May 19, 1994
C30-7	GECX526	May 19, 1994
C30-7	GECX529	May 19, 1994
C30-7	GECX532	May 19, 1994
C30-7	GECX533	May 19, 1994
C30-7	GECX534	May 19, 1994
C30-7	GECX535	May 19, 1994
C30-7	GECX536	May 19, 1994
C30-7	GECX537	May 19, 1994
C30-7	GECX538	May 19, 1994
C30-7	GECX539	May 19, 1994
C30-7	GECX540	May 19, 1994
C30-7	GECX541	May 19, 1994
C30-7	GECX542	May 19, 1994
C30-7	GECX543	May 19, 1994
C30-7	GECX544	May 19, 1994
C30-7	GECX545	May 19, 1994
C30-7	GECX546	May 19, 1994
C30-7	GECX547	May 19, 1994
C30-7	GECX548	May 19, 1994
C30-7	GECX549	May 19, 1994
C30-7	GECX550	May 19, 1994
C30-7	GECX551	May 19, 1994
C30-7	GECX552	May 19, 1994
C30-7	GECX553	May 19, 1994
C30-7	GECX554	May 19, 1994
C30-7	GECX555	May 19, 1994
C30-7	GECX556	May 19, 1994
C30-7	GECX557	May 19, 1994
C30-7	GECX558	May 19, 1994
C30-7	GECX559	May 19, 1994
C30-7	GECX560	May 19, 1994
C30-7	GECX561	May 19, 1994
C30-7	GECX562	May 19, 1994

<u>Description</u>	<u>Current</u>	Road Numbers <u>New</u>	Estimated <u>Delivery Date</u>
--------------------	----------------	----------------------------	-----------------------------------

B. Term. As to the Schedule A-1 Locomotives on this Schedule, the term of the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-1 is attached shall expire on the earlier to occur of (i) September 30, 1998 or (ii) the NS/CSX Control Date, or on such other date as the parties to the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-1 is attached may agree in writing.

## SCHEDULE A-2

A. Description of Locomotives. The "Schedule A-2 Locomotives" under the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-2 is attached shall be the General Electric diesel electric locomotives bearing the following road numbers and being scheduled to be placed into Lessee's possession on the following dates:

<u>Description</u>	<u>Road Number</u>	<u>Estimated Delivery Date</u>
C30-7	GECX500	May 19, 1994
C30-7	GECX504	May 19, 1994
C30-7	GECX505	May 19, 1994
C30-7	GECX513	May 19, 1994
C30-7	GECX516	May 19, 1994
C30-7	GECX517	May 19, 1994
C30-7	GECX518	May 19, 1994
C30-7	GECX519	May 19, 1994
C30-7	GECX522	May 19, 1994

B. Term. As to the Schedule A-2 Locomotives on this Schedule, the term of the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-2 is attached shall expire on the earlier to occur of (i) September 30, 1998 or (ii) the NS/CSX Control Date, or on such other date as the parties to the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule A-2 is attached may agree in writing.

## SCHEDULE B

A. Description of Locomotives. The "Schedule B Locomotives" under the Locomotive Lease and Rehabilitation Agreement to which this Schedule B is attached shall be the General Electric diesel electric locomotives bearing the following road numbers and being scheduled to be placed into Lessee's possession on the following dates:

<u>Description</u>	<u>Road Number</u>	<u>Estimated Delivery Date</u>
C30-7	GECX580	October 1, 1997
C30-7	GECX581	October 1, 1997
C30-7	GECX582	October 1, 1997
C30-7	GECX583	October 1, 1997
C30-7	GECX584	October 1, 1997
C30-7	GECX585	October 1, 1997
C30-7	GECX586	October 1, 1997
C30-7	GECX587	October 1, 1997
C30-7	GECX588	October 1, 1997
C30-7	GECX589	October 1, 1997
C30-7	GECX590	October 1, 1997
C30-7	GECX591	October 1, 1997
C30-7	GECX592	October 1, 1997
C30-7	GECX593	October 1, 1997
C30-7	GECX594	October 1, 1997
C30-7	GECX595	October 1, 1997

B. Term. As to the Schedule B Locomotives on this Schedule, the term of the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule B is attached shall expire on the earlier to occur of (i) September 30, 1998 or (ii) the NS/CSX Control Date, or on such other date as the parties to the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule B is attached may agree in writing.

## SCHEDULE C

A. Description of Locomotives. The "Schedule C Locomotives" under the Locomotive Lease and Rehabilitation Agreement to which this Schedule C is attached shall be the General Electric diesel electric locomotives bearing the following road numbers and being scheduled to be placed into Lessee's possession on the following dates:

<u>Description</u>	<u>Road Number</u>	<u>Estimated Delivery Date</u>
Super7-30C	GECX3000	January 1, 1998
Super7-30C	GECX3001	January 1, 1998
Super7-30C	GECX3002	January 1, 1998
Super7-30C	GECX3003	January 1, 1998
Super7-30C	GECX3004	January 1, 1998
Super7-30C	GECX3005	January 1, 1998
Super7-30C	GECX3006	January 1, 1998
Super7-30C	GECX3007	January 1, 1998
Super7-30C	GECX3008	January 1, 1998
Super7-30C	GECX3009	January 1, 1998
Super7-30C	GECX3010	January 1, 1998

B. Term. As to the Schedule C Locomotives on this Schedule, the term of the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule C is attached shall expire on the earlier to occur of (i) September 30, 1998 or (ii) the NS/CSX Control Date, or on such other date as the parties to the Amended and Restated Locomotive Lease and Rehabilitation Agreement to which this Schedule C is attached may agree in writing.



## ANNEX 1

LABOR	\$58.00 per hour.
MATERIAL	Component prices in accordance with Lessee's standard practice with respect to Lessor.
TRANSPORTATION	No charge.
STORAGE	No charge.

## EXHIBIT A

### LOCOMOTIVE SALES AGREEMENT

This Locomotive Sales Agreement, dated as of \_\_\_\_\_, 1998, is by and between Consolidated Rail Corporation, a Pennsylvania corporation ("Buyer"), and General Electric Company, a New York corporation, acting through its Transportation Systems Business Operations ("Seller").

The parties agree as follows:

1. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Seller hereby sells to Buyer all of Seller's right, title and interest in and to the locomotives identified on Schedule 1 hereto (collectively, the "Conveyed Locomotives").
2. The Conveyed Locomotives will be delivered "as is, where is" on or about \_\_\_\_\_, 1998 [applicable date]. Upon delivery, title to the Conveyed Locomotives and all risk of loss or damage shall pass to Buyer. Delivery times are approximate.
3. Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the sale or delivery of the Conveyed Locomotives or to their use by Buyer, or Buyer shall furnish Seller with a tax-exemption certificate acceptable to the taxing authorities.
4. Seller shall not be liable for delays in delivery or performance or for failure to deliver or perform due directly or indirectly to (i) causes beyond Seller's reasonable control or (ii) acts of God, acts of Buyer, acts (including failure to act) of any governmental authority (de jure or de facto), wars (declared or undeclared), governmental priorities, port congestion, riots, revolutions, strikes or other labor difficulties or disturbances, fires, floods, sabotage, nuclear incidents, earthquakes, storms, epidemics or delays in transportation. The foregoing shall apply even though any of such causes exists on the date hereof or occurs after Seller's performance of its obligations is delayed for other causes. In the event of any such delay, there will be no termination and the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.
5. (a) Seller hereby warrants to Buyer that Seller has legal title to the Conveyed Locomotives and good and lawful right to sell the Conveyed Locomotives, and that title thereto is free from all claims, liens, security interests and other encumbrances arising by, through or under Seller. Seller shall, at its expense, defend such title to the Conveyed Locomotives against the demands of all persons whomsoever based on claims

arising by, through or under Seller originating prior to delivery hereunder, and promptly cure, at its expense, any failure to conform to the warranty set forth herein. This remedy is exclusive and constitutes Buyer's sole remedy and Seller's sole liability for failure to conform to the foregoing warranty.

(b) Except as provided in subsection (a) above, Seller is selling the Conveyed Locomotives to Buyer in an "as is, where is" condition, with all faults, and Seller makes no warranties of any nature whatsoever that extends beyond those referred to in subsection (a). Without limiting the generality of the preceding sentence, the foregoing is in lieu of all warranties, whether oral, written, express, implied or statutory. NO IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY.

6. (a) Unless otherwise agreed in writing by a duly authorized representative of Seller, the Conveyed Locomotives are not intended for use in connection with any nuclear facility or activity. If so used and any nuclear damage, injury or contamination occurs, Seller disclaims all liability of every kind, and Buyer shall indemnify Seller from any such liability, including, but not limited to, Seller's negligence.

(b) The total liability of Seller, including its subcontractors or suppliers, on any and all claims, whether in contract, warranty, tort (including, but not limited to, negligence or patent infringement) or otherwise, arising out of, connected with, or resulting from the performance or non-performance of any agreement resulting herefrom or from the sale, delivery or use of any Conveyed Locomotives shall not exceed the sum of \$130,000.00. In no event, whether as a result of breach of contract, warranty, tort (including, but not limited to, negligence or patent infringement) or otherwise, shall Seller, or its subcontractors or suppliers, be liable for any special, consequential, incidental, indirect or exemplary damages, including, but not limited to, loss of profit or revenue, loss of use of the Conveyed Locomotives or any associated equipment, damage to associated equipment, cost of capital, overhead, cost of substitute goods, facilities, services or replacement power, downtime costs or claims of Buyer's customers for such damages.

(c) If Buyer transfers title to or leases the Conveyed Locomotives to any third party, Buyer shall require the third party transferee to undertake, expressly and in writing, all commitments of Buyer under this Section 6 and to afford Seller and its suppliers the protection of the preceding paragraphs of this Section 6. Buyer shall indemnify Seller and hold it harmless from all loss, cost and expense arising directly or indirectly out of any failure of Buyer to satisfy the requirements of this Section 6.

(d) Notwithstanding any other provision of this Agreement, Seller shall have no liability to Buyer unless Seller is given prompt written notice and a reasonable opportunity to cure the matter allegedly giving rise to such liability.

7. The delegation or assignment by Buyer of any or all of its duties or rights hereunder without Seller's prior written consent shall be void.

8. The validity, performance and all matters relating to the interpretation and effect of this Agreement and any amendment hereto shall be governed by the internal substantive law of the State of New York (without reference to the State's rules with respect to conflict of laws).

9. The provisions of this Agreement are for the benefit of the parties hereto and not for any other person.

10. This Agreement constitutes the entire and only agreement between the parties relating to the subject matter hereof and it supersedes and cancels all proposals, agreements, negotiations, commitments and representations in respect thereof made prior to the date of this Agreement. Any representation, understanding, proposal, agreement, warranty, course of dealing or trade usage not contained herein shall not be binding on Seller. No modification, amendment, rescission, waiver or other change to this Agreement shall be binding on Seller unless assented to in writing by Seller.

Consolidated Rail Corporation

General Electric Company

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# SCHEDULE 1

## DESCRIPTION OF LOCOMOTIVES

<u>Description</u>	<u>Road Numbers</u>
C30-7	GECX500
C30-7	GECX504
C30-7	GECX505
C30-7	GECX513
C30-7	GECX516
C30-7	GECX517
C30-7	GECX518
C30-7	GECX519
C30-7	GECX522